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TO:

Examiner Choi

TELECOPY NO.: 571-273-8300

FROM: Gregory S. Cooper
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NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 18
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Serial No. 10/630875
Filing Date: July 30, 2003
Confirmation No. 7941
Docket No. 29595/82608
Group Art No. 1771
Title: Laminated Composition for a Headliner and Other Applications
First Named Inventor: Garry E. Balthes

Dear Examiner Choi:

Per our conversation, a copy of the 16-page Appeal Brief and a copy of the USPTO-stamped Return Receipt Postcard follow.

Regards,


Gregory S. Cooper

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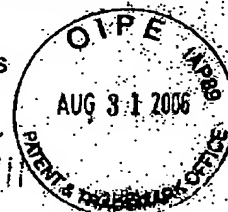
Mailed: August 28, 2006
Serial No. 10/630875
Docket No. 29595/82608
Title Laminated Composition for a Headliner and Other Applications
First Named Applicant: Garry E. Baltes

X Check totaling \$250.00
X Transmittal (2 pages)
X Fee Transmittal (4 pages)
X Appeal Brief (16 pages) with original Tab A: 39 pages; Tab B: 38 pages; Tab C: 2 pages
plus sample
X Petition Under 37 C.F.R. § 1.81 (5 pages) with copies of Tab A: 38 pages; Tab B: 37
pages; Tab C: 2 pages + sample copy

Receipt is hereby acknowledged of the papers filed as indicated in connection
with the above identified case.

COMMISSIONER OF PATENTS AND TRADEMARKS

Due: 8/29/06



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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**PATENT APPLICATION****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Customer No.: 23641
Application No.: 10/630875
Confirmation
No.: 7941
Filing Date: July 30, 2003
Attorney
Docket No.: 29595/82608
First Named
Inventor: Garry E. Balthes
Group Art
Unit: 1771
Examiner
Name: Jennifer A. Boyd
Title: Laminated Composition for a
Headliner and Other
Applications

Certificate Under 37 CFR 1.8(a)

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22313-1450

on August 28, 2006


Zellma Grunden

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner of Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal was filed in this application in accordance with 37 CFR §41.31(a) on June 30, 2006. This Appeal Brief is filed in accordance with 37 CFR §41.37. The requisite fee of \$250.00 accompanies this brief pursuant to 37 CFR §41.20(2). Authorization is given to credit any overpayment or charge any additional fees required to the Deposit Account of Barnes & Thornburg LLP, Account Number 02-1010 (29595/82608).

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REAL PARTY IN INTEREST

Applicants have assigned their interest in this case to FlexForm Technologies, LLC (hereinafter "Appellant"). The assignment was recorded in the United States Patent and Trademark Office at Reel 014828 and Frame 0514, on December 29, 2003.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences.

STATUS OF THE CLAIMS

Claims 19-26 and 42-43 are pending in this application. Claims 1-18 and 27-41 are canceled without prejudice to Appellant's right to pursue these claims in (a) future divisional application(s). Claims 19, 21-22, 26 and 43 stand finally rejected under 35 U.S.C. § 102(e) and Claims 20, 23-25, and 42 stand finally rejected under U.S.C. § 103(a), as detailed in the Final Office Action mailed on January 30, 2006. This final rejection of claims 19-26 and 42-43 is appealed.

STATUS OF AMENDMENTS

Claim 20 was objected to and Claim 22 was rejected under 35 U.S.C. § 112. Claim 20 was, therefore, amended by removing "the" to establish proper antecedent basis for the word "sisal." Claim 22 was similarly amended to correct the spelling of the word "cellulose." The Examiner's Advisory Action mailed May 24, 2006, indicated both amendments were accepted and an Interview Summary Report mailed July 31, 2006, indicated the objection and rejection were withdrawn. Accordingly, only the 35 U.S.C. §§ 102(e) and 103(a) rejections remain.

SUMMARY OF CLAIMED SUBJECT MATTER

The following summary is provided in accordance with 37 C.F.R. § 41.37(c)(v) and M.P.E.P. §1206 and correlates claim elements or steps to embodiments described in the specification. Consistent with M.P.E.P. §1206, the following summary is not intended in any manner whatsoever to limit the scope of the claims. Rather, the summary is provided to enable

the Board to more quickly determine where the claimed subject matter is described in the application and to facilitate the Board's understanding of the subject matter of the appeal.

The claimed invention is directed to a headliner. Headliners are structures known in the art to line the ceiling of a vehicle. *See* specification ("paper 7/20/2003") at 2-3. Because headliners are exposed to excessive heat at the upper portion of the vehicle compartment, dimensional stability of the headliners may be affected. *See Id.* Headliners, therefore, need to be rigid structures that resist deflection. Typically they satisfy a deflection (through cantilever testing) tolerance of 10 millimeters in standard headliner applications. *See Id.* at 11. Consequently, the intent of the claimed invention is to provide a "headliner" from a composition of materials that obviously qualifies a "headliner."

Claim 19 is directed to a headliner (e.g. 14 or 30) comprising a headliner core layer (2). *See e.g.*, Figs. 4 and 9. The headliner core layer (2) includes a first surface (3) and a second surface (5) and is composed of a binding resin and randomly orientated natural fibers disbursed throughout the layer's thickness. A permeability-resistant film layer (e.g., 4 or 32) is located on the first surface (3) of the headliner core layer (2). A woven fiber layer (16) is located on the second surface (5) of the headliner core layer (2). A film layer (e.g., 18 or 34) is located over the woven fiber layer (16) opposite the headliner core layer (2). The film layers can be useful to provide a moisture resistant barrier for the headliner core and woven layers. *See* paper 7/20/2003 at 13, lines 1-4. Conventional headliners are known to be inherently rigid structures that line the car's roof (deflection tolerance of 10mm).

The composite (14) of Fig. 4 is "quite rigid" experiencing a sag of only about 1.27 millimeters. A cantilever test was applied to this sample after being subjected to a temperature of 95°C (203°F) and allowed to cool for one hour to a temperature of 23°C (73°F). Similar cantilever tests were conducted on other samples, as described on pages 11-13 of the application. Such compositions may, therefore, display the rigidity required in headliner applications even after being subjected to high temperature conditions.

Additionally, claim 20 discloses ranges of layer compositions that include sisal to produce a headliner. The claimed composition comprises about 35% to 45% sisal, about 25% to

35% natural fiber, and only 25% to 35% polypropylene binder. About 65% to 75% of the headliner core layer is fiber. Sisal adds rigidity to the composite. Claim 42 claims at least a portion of the randomly-oriented natural fibers comprising sisal fibers.

ISSUES

Whether the “headliner” of Claim 19 comprising among other limitations a “headliner” core layer is anticipated by Jarrard et al. (U.S. Patent No. 6,871,898) (“Jarrard”) disclosing a flexible cloth convertible top; and whether the “headliner” of Claim 20 comprising sisal fibers is obvious under Jarrard’s flexible convertible top in view of Spengler et al. (U.S. Patent No. 5,709,925) (“Spengler”).

GROUPING OF CLAIMS

For the reasons set forth herein and for purposes of this appeal only, Appellant respectfully submits the appealed claims should be grouped as follows:

Group 1 - Claims 19, 21-26 and 43; and

Group 2 - Claims 20 or 42.

A distinction between these groups is that Group 2 comprises randomly orientated natural sisal fibers. Claim 20, in particular, discloses a range of layer compositions that include sisal to produce a headliner. The high strength and rigidity characteristics that result from using this fiber in trim panels disclosed in Spengler are contrasted with the “flexible” convertible top disclosed in Jarrard. The patentability of Group 2 is, therefore, distinct from Group 1 rejected under Jarrard alone.

ARGUMENT

I. The Flexible-Fabric Convertible Automobile Roof of Jarrard Fails to Teach the Vehicle Headliner of Claim 19.

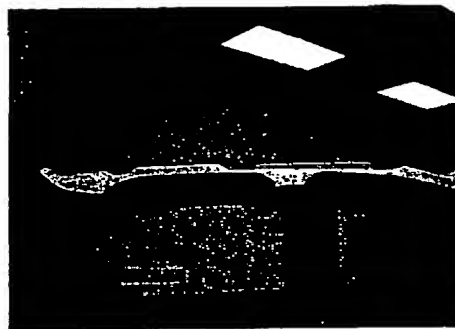
By definition, a headliner is not a flexible convertible roof. A headliner is a rigid structure that lines the ceiling of a vehicle whereas a convertible roof is the flexible and foldable

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ceiling of a vehicle. The pictures which follow demonstrate these distinctions.¹



Flexible convertible Roof²



Rigid Headliner

The convertible roof by definition must be flexible to fold and stow as shown above. In contrast, the headliner is a rigid body, evidenced by its ability to suspend between the two chairs without sagging. The Examiner should understand these distinctions (and as discussed below did understand these distinctions). Typically, the Applicant is not required to offer an exhaustive recitation on the definition of structures known in the art. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986) (A patent specification need not teach, and preferably omits, what is well known in the art.); *see also* MPEP § 2182. A sample of a headliner accompanies this brief (under Tab C) demonstrating that headliners are rigid bodies not flexible convertible fabrics.

The Patent Office also recognizes the distinctions between headliners and convertible roof tops. For example, headliners are identified in Class 296, subclass 214 as (a) "a second covering located below and spaced from said covering means to form a covering which most directly forms the ceiling of the passenger compartment," or (b) "means for supporting said second covering in its operative position." In contrast, a flexible convertible top like that of Jarrard is identified with Class 296, subclass 107.01 which is defined as "a top capable of

¹ The Affidavit of Mr. Balthes, filed concurrently with this brief, certifies these pictures accurately represent a convertible top and a headliner. The Affidavit further evidences distinctions between a convertible roof and a headliner.

² This picture was obtained from the following web address <http://www.canadianautoreview.com/corvetteconv-%20roof1.jpg> and is being used for informational purposes only.

assuming a plurality of positions relative to the body of the vehicle and when in the down or inoperative position the vertical dimension of the top is changed.” The headliner shown above cannot assume a plurality of positions or change its vertical dimension like the convertible roof top.

In any event, the Examiner equates headliners to convertible roofs because (a) allegedly nothing in the specification identifies a headliner as “rigid,” nor (b) does any evidence imply that a “headliner” is “rigid.” Accordingly, the Examiner introduces a Webster’s Ninth New Collegiate Dictionary definition of a headliner as “a fabric covering the inside roof of an automobile,” and maintains the flexible convertible top of Jarrard falls within the scope of the Claim 19.³ Paper 5/24/2006 (Advisory Action) at 2. But defining the claimed headliner as a mere “fabric” ignores and repudiates not only the specification but the claims themselves. Confusingly, this definition also contradicts the Examiner’s own view that the claimed headliner is a “rigid” structure.

A. The Specification Identifies a Headliner as “Rigid.”

Despite the Examiner’s allegation to the contrary, the specification identifies a headliner to be “quite rigid[.]” See paper 7/26/2003 at 11 (emphasis added). Cantilever testing also disclosed in the specification demonstrated the stiffness or rigidity of various headliner compositions. See *Id.* at 11-13. These compositions show deflection ranging from only 1.27 millimeters up to 15.69 millimeters. *Id.* The specification further identifies a 10 millimeter deflection as target “for a headliner application.” *Id.* at 11(emphasis added). Sisal fibers are also identified as providing “stiffness as well as loft and standoff in high temperature environments” for headliners. *Id.* at 7. Nowhere did the Examiner ever acknowledge this evidence.

B. Evidence Shows a Headliner Implies Rigidity

Accompanying this brief are two Affidavits from one of the inventors that

³ This construction was introduced in an Advisory Action, rather than in any of the prior five office actions. This is the need for the Affidavits filed after the final Office Action and why the Affidavits could not be submitted earlier.

includes evidence from an unrelated third-party demonstrating that headliners are known structures and that one skilled in the art knows headliners are rigid. The "Statement of Work: Class 3 Recyclable Headliner" from Johnson Controls (which has no relation to the Appellant), and attached to the Affidavit under Tab A, is a 34 page document that describes the specification for headliners used in Toyota vehicles. On pages 28 and 29 under the heading "Benchmark Data," a headliner has a stiffness of 2.0 N/mm and deflects less than 10mm. The deflection is identical to the deflection listed in the specification of 10mm.⁴ Moreover, these tests are conducted after the headliner was subjected to high temperatures. See "Toyota Engineering Standard TSF7762G" at 2-3, and "Johnson Controls Product Testing Section" at 1, both under Tab B. These tests are also consistent with the high temperature testing disclosed in the specification.

In contrast, Jarrard's flexible convertible roof cited against Claim 19 teaches:

The overall composite preferably is sufficiently flexible to be bendable to an angle of 45 degrees preferably at a force less than about 300 g*cm, more preferably at a force of about 100 to about 240 g*cm, and most preferably at a force of about 150 to about 200 g*cm as measured by the cantilever bending test (ASTM D5732). The composite is conformable enough to fit the desired position on the vehicle.

Col. 2, Ins. 6-13. Comparing a flexible convertible roof to a rigid headliner is comparing apples to oranges. They are not the same things. For the Examiner to allege a flexible convertible roof equals a headliner contradicts the specifications of both the current application and Jarrard, and contradicts the objective third-party evidence demonstrating knowledge in the art. The issue here is not importing the specification into the claim. Rather, the issue is merely interpreting the meaning of the word "headliner."

C. Defining a Headliner as a Flexible "Fabric" Equal to a "Convertible Top" is Unsupportable by the Examiner's Own Statements Made During Prosecution.

Appellant agrees with the Examiner's newly formed definition of "headliner" only to the extent it covers "the inside roof of an automobile." Defining a "headliner" as a

⁴ This evidence is not intended to read the specification into the claims. Rather the Appellant is simply establishing what a "headliner" is.

flexible “fabric” no different than a convertible roof, however, fails under the weight of the Examiner’s own positions during prosecution.

In numerous instances, the Examiner cited prior art against the headliner because:

the fibers of its core layer are “**stiff and rigid** re-enforcing material;”

provide “good mechanical **strength**;”

the headliner has “a core with optimal **stiffness** and stability;” and

the film layers “**prevent** the composite layers from **bowing**.”

See paper 6/6/2005 at 5-7, and paper 7/15/2005 at 3, 5-7(emphasis added). These are just a few of the numerous instances throughout the prosecution where the Examiner identified prior art based on the headliner’s rigid structure.⁵

Not until an Advisory Action file after the fifth (and final) Office Action in this case does the Examiner allege the claimed headliner is a flexible “fabric”. See Paper 5/24/06 at 2.⁶ The Examiner’s definition of a flexible “fabric” for the headliner not only contradicts her position during prosecution, there is no support for it in the specification, the relevant art, or the claims themselves. Nowhere in the specification is the word “fabric” used, nor “flexible fabric.” To the contrary and as previously discussed, the specification describes a headliner as rigid (with deflection no more than 10mm during environmental testing). The “headliner” of Claim 19, also does not recite a flexible “fabric.” On its face the claimed headliner is a composite comprising a headliner core layer having randomly-oriented natural fibers dispersed throughout the layer’s

⁵ Additionally, the limitation “core layer” was amended specifically to “headliner core layer” to ensure that “headliner” was a limitation of the claim. This amendment had the effect of eliminating non-headliner art. See paper 6/6/2005 at 2, section 1 and section 3 (referring to interior trim panels for motor vehicles). By adding the limitation of “natural fibers disbursed throughout the layer’s thickness” the Examiner indicated via voice mail on October 25, 2005, that Claim 19 was allowable. See paper 10/31/2005 at 10. Rather than receiving an Allowance, however, the Examiner finally rejects Claim 19 by introducing non-headliner art. See paper 1/30/2006 at 3-5. The effect of limiting the claim, therefore, was broadening the scope of relevant prior art. This is counter-intuitive.

⁶ Because the Examiner maintained there was no indication of rigidity in the specification, the Examiner refused to enter Applicant’s Rule 132 Affidavit which attempted to establish the level knowledge in the art of headliners. See Paper 5/24/06 at 2. A copy of this originally filed Affidavit accompanies this brief under Tab A.

thickness (not a fabric), a permeability-resistant film layer (not a fabric), and a film layer (also not a fabric). The claim includes a woven layer, but that is only in conjunction with the headliner core layer and the two film layers. No single layer in the specification is identified as a "headliner." There is no instance where the woven layer is identified as "headliner" on its own in either the specification, drawings, or claims. The headliner is the sum total of the composite composition. As the inventor stated in his Affidavit under Tab B (section 7), a fabric lining is a mere decorative fascia to what those skilled in the art know to be a headliner. Note that the claimed woven layer is not the decorative fascia that can be applied to the headliner.

II. The Flexible-Fabric Convertible Automobile Roof Top Fails to Teach Every Limitation of Claim 19.

On pages 3 and 4 of the Office Action mailed 1/30/2006, the Examiner rejected claim 19 under 35 U.S.C. § 102(e) as being anticipated by Jarrard. In the Advisory Action mailed 5/24/2006 the Examiner maintained that every limitation of Claim 19 is present in Jarrard. Particularly, the Examiner identified Jarrard as directed to a soft cover for a vehicle having a water resistant top layer, a flexible foam layer, and a protected bottom layer. See paper 1/6/2006 at 3.

In order for a prior art reference to anticipate a claim, it *must teach every element of that claim*. See MPEP § 2131 (emphasis added). The law is clear in this regard that "[a] claim is anticipated only if *each and every element as set forth in the claim is found*, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added).

Here, Jarrard fails to anticipate either expressly or inherently at least "a vehicle headliner," "a headliner core layer," and "a film layer." With respect to the preamble claiming a "headliner," the Examiner took the position the flexible convertible top is identical. For the reasons previously discussed, that position is in error. Jarrard does not disclose a headliner, either expressly or inherently.

The Examiner further alleges the claimed "headliner core layer" is equivalent to the foam layer with Jarrard that may incorporate natural fibers such as cotton, silk, or wool in the

foam. *See* Jarrard at col. 5, lines 25-40. Again, the “headliner core layer” is not a “flexible foam layer” for the reasons previously discussed. Moreover, the headliner core layer specifically requires “randomly-orientated natural fibers disbursed throughout the layer’s thickness.” The Examiner alleging that natural fibers in Jarrard can be laminated, incorporated, or compounded in the foam does not mean the natural fibers are disbursed throughout the layer’s thickness. The lamination, for example, indicates an intent for a surface concentration of natural fiber, not a dispersion throughout the layer’s thickness. Moreover, the flexible foam layer of Jarrard is intended to be flexible, not a rigid “headliner core layer” as claimed. Accordingly, Jarrard does not teach a “headliner core layer” nor a core layer including natural fibers disbursed throughout the layer’s thickness. Furthermore, the Jarrard top is more like a fabric, not a rigid headliner panel. *See* Jarrard col. 2, lns. 22-24.

Jarrard also does not include either expressly or inherently a film layer located over the woven layer opposite the headliner core layer. The Examiner equates the film layer to the stain-resistant treatment applied to the woven fabric in Jarrard, such as PREFIXX, Scotchguard fabric treatment, Teflon, or Silicone. *See Id.* at col. 6, lns. 1-8. During prosecution, the Examiner interpreted the word “film” as “an extremely thin continuous sheet of substance that may or may not be in contact with a substrate” according to Hawley’s Condensed Chemical Dictionary. Paper 10/28/2004 at 4, section 7 (emphasis added). In a subsequent Interview Summary, the specific issue of a prior art reference describing treating fibers with resin (similar to the Scotchguard treatment of Jarrard), in contrast to a “film layer,” was discussed. *See* paper 2/7/2005. One of the named inventors filed an Affidavit asserting the claimed “film layer” was consistent with the Examiner’s interpretation of the limitation “film layer” and different than the fiber treatment. *See* paper 2/28/05 (Response) at 11, and paper 2/28/05 (Rule 132 Affidavit) at 3, section 5. The Affidavit asserted that, “[i]ndividual fibers being treated with a resin is not a composite layer applied to the surface of a second layer.” Paper 2/28/05 (Rule 132 Affidavit) at 3, section 5. The fiber treatment was not the same thing as a film layer by the Examiner’s own definition. In response, the Examiner agreed and withdrew the rejection. *See* paper 6/6/2005 at 2, section 1.

The identical rejection is now raised again contrary to the Examiner’s own

interpretation of the phrase "film layer" and despite having dealt and dispensed with this issue three office actions previously. The Examiner has already determined that a fiber treatment such as that disclosed in Jarrard is not a continuous sheet and thus not a "film layer." Accordingly, equating the stain-resistant treatment to the "film layer" fails under the weight of the Examiner's own claim interpretation. Jarrard, thus, fails to teach all the limitations of Claim 19 for at least this reason alone.

III. The Combination of Jarrard and Spengler does not Render Obvious Either Claims 20 and 42.

In light of the foregoing arguments, the combination of Jarrard and Spengler fails to teach the claimed invention of either Claims 20 and 42. Nevertheless, on their own Claims 20 and 42 claim randomly-orientated natural fibers being sisal fibers. As discussed in the specification, sisal fiber provides thickness as well as loft and standoff in high temperature environments. See paper 7/20/2003 at 7. And particularly, Claim 20 comprises about 35% to 45% sisal, about 25% to 35% natural fiber, and only 25% to 35% polypropylene binder. About 65% to 75% of the headliner core layer is fiber. As discussed in the Affidavit under Tab B, this produces a rigid panel not a flexible roof top.

Currently, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art to modify or to combine the references' teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (a reference is when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art and not based on Appellants disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); see also MPEP § 2143.

With respect to motivation, the prior art must suggest the desirability of the claimed invention, pursuant MPEP § 2143.01 Section I:

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

Furthermore, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2143.01 Section V. Also, the same is true if the combination of the prior art would change the principle of operation of the prior art invention being modified. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). MPEP § 2143.01 § VI. Thus, the teachings of the references cannot be sufficient to render the claims *prima facie* obvious. *Id.*

With respect to the reasonable expectation of success requirement, some predictability is required to show such a reasonable expectation at the time the invention was made. *See* MPEP § 2143.02. In addition, evidence can be presented to support the position that no reasonable expectation of success exists. *Id.*

With respect to teaching all of the claim limitations by the prior art, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970), *see also* MPEP § 2143.03. Furthermore, all of the limitations of the claims must be considered and given weight. *Id.*

The Examiner alleges that Jarrard teaches the claimed invention above, but fails to teach that a portion of the randomly-oriented natural fibers can comprise sisal as required by Claim 42. *See* paper 1/30/2006 at 6. The Examiner contends, however, that Spengler is directed to a multi-layered panel having a core including natural fibers such as straw, cotton, flax, sisal, hemp, jute, or the like, or combinations thereof, and preferably includes flax and/or sisal (column 4, lines 59-64). *Id.* The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate sisal fibers as a portion of the natural fibers as suggested by Spengler in the foam layer of Jarrard et al. motivated by the desire

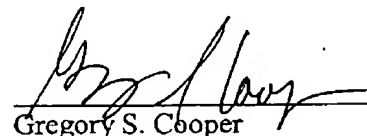
to use a functionally equivalent fiber based on the cost and availability various natural fibers and desired characteristics of the panel. *Id.* With respect to Claim 20, the Examiner alleges the formulation claimed ranges are simply optimum "to create a core with optimum strength and stability." *Id.* at 7.

"It is improper to combine references where the references teach away from their combination." MPEP § 2145 citing *In re Grasselli*, 713 F.2d 731, 218 USPQ 769, 779 (Fed. Cir. 1983). As stated in the Affidavit, the headliner of claim 20 is a rigid structure. Jarrard teaches a **flexible** cloth top and Spengler teaches a **rigid** trim panel. Spengler states the "finished panel [has] a sufficient strength and **stiffness** to form **self-supporting** automobile interior panels, such as ceiling headliners . . . and that maintains a formed shape when finished." Col. 2, lns. 7-10 and 21-22 (emphasis added). In contrast, Jarrard's convertible roof top is flexible specifically to change its shape. Consequently, these references specifically teach away from each other. Modifying Jarrard to make its flexible convertible top a rigid panel produces a wholly undesirable result, makes the flexible convertible top unsatisfactory for its intended purpose, and changes the principle of operation of the top.

CONCLUSION

For the reasons set forth above, Appellants respectfully submit that Claims 19-26 and 43 on appeal are patentable over the art of record, including the Jarrard patent. The Examiner's rejections of these claims based on the Jarrard patent are unsupportable. Accordingly, Appellants respectfully submit that the rejections of Claims 19-26 and 43 are in error and respectfully requests that these rejections be reversed.

Respectfully submitted,



Gregory S. Cooper
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CLAIMS APPENDIX**THE CLAIMS ON APPEAL ARE:**

1 - 18 (Canceled without disclaimer of subject matter.)

19. A vehicle headliner comprising:

a headliner core layer having first and second surfaces, and comprising a binding resin, and randomly-oriented natural fibers dispersed throughout the layer's thickness;

a permeability-resistance film layer located on the first surface of the headliner core layer;

a woven fiber layer located on the second surface of the headliner core layer; and

a film layer located over the woven fiber layer opposite the headliner core layer.

20. The vehicle headliner panel of Claim 19, wherein the binding resin of the core layer is a polypropylene and is present in an amount of about 25 to about 35 weight percent, sisal is present in an amount of about 35 to about 45 weight percent, and the natural filler fibers are present in an amount of about 25 to about 35 weight percent.

21. The vehicle headliner panel of Claim 19, wherein the woven fiber layer is a polyester woven fiber layer.

22. The vehicle headliner panel of Claim 19, wherein the woven fiber layer is a polypropylene/cellulose woven fiber layer.

23. The vehicle headliner panel of Claim 19, wherein the film layer is a polypropylene film.

24. The vehicle headliner panel of Claim 19, further comprising a 4 mil polypropylene film layer.

- 25. The vehicle headliner panel of Claim 19, wherein the binding resin is a nylon film layer.
- 26. The vehicle headliner panel of Claim 19, further comprising a 4 mil layer.
- 27-41 (Canceled without disclaimer of subject matter.)
- 42. The vehicle headliner panel of Claim 19, wherein at least a portion of the randomly-oriented natural fibers comprises sisal fibers.
- 43. The vehicle headliner panel of Claim 19, wherein the binding resin is polypropylene.

EVIDENCE APPENDIX

TAB

Affidavit of Garry Balthes filed on May 10, 2006 A
(Papers 5/10/2006 Applicant's Arguments/Remarks made in an Amendment and Rule
130 or 132 Affidavits)

Affidavit (new) of Garry Balthes filed on August 28, 2006 B
(Filed under Petition)

Sample of a headliner. C
(Filed under Petition)